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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re B.O. et al., Persons Coming  
Under Juvenile Court Law.

B275711

(Los Angeles County  
Super. Ct. No. CK90504)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.O.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Marguerite Downing, Judge. Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal,  
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Marsha F. Levine for the Minors.

## I. INTRODUCTION

The mother, E.O., appeals from the April 13, 2016 orders denying her motion for a continuance and terminating her parental rights pursuant to Welfare and Institutions Code<sup>1</sup> section 366.26. The mother contends the section 366.26 hearing should have been continued to allow her voluntary relinquishment to become final. According to the mother, the juvenile court's denial of the five-day continuance request was an abuse of discretion requiring reversal of the order terminating her parental rights. We affirm the orders under review.

## II. BACKGROUND

The mother's two children, now eight-year-old B.O. and six-year-old A.T., were first detained from her in October 2011. The children were returned to the mother's custody respectively in November and December 2011. In June 2012, the children were removed from the mother's custody and later placed with a maternal aunt and uncle. In February 2014, the children were removed from the maternal aunt and uncle's home after A.T. received bruises on his face and lower back while in the relatives' care. On June 3, 2014, the juvenile court terminated the mother's family reunification services.

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

On June 20, 2014, the children were placed with the prospective adoptive parents, Cheryl and Gregory E. A.T. was diagnosed with a congenital heart defect, failure to thrive and had a G-tube placement. On August 20, 2014, the child had surgery to close his G-tube site. A.T. did well and appeared comfortable with the prospective adoptive parents. The foster parents indicated they wanted to adopt the children.

Sometime in 2014, another maternal aunt, Dayanara G., expressed interest in having the children placed with her. In September 2014, the mother expressed the desire to relinquish her paternal rights. The mother wanted to allow Dayanara G. to adopt the children. On April 3, 2015, the department was ordered to assess Dayanara G. for placement of the children and to arrange visits with her if appropriate. The department approved the adoptive home-study for Dayanara G. on January 27, 2016.

On February 6, 2016, the children had unmonitored overnight visits with Dayanara G. Cheryl E., the children's prospective adoptive mother, expressed concern that the maternal relatives, who had physically abused the children, had visited the minors while they were with Dayanara G. Further, Dayanara G. had not completed medical training to care for A.T.

On March 3, 2016, the prospective adoptive parents both stated A.T. had behavioral issues after he started visitations with Dayanara G. The prospective adoptive parents wrote: “At home, we have noticed [A.T.] reverting to babyish behavior, including increased bed wetting, tantrums and whining, and fear of sleeping alone in his bedroom. These were behaviors we addressed when [A.T.] first came to live with us almost two years ago, so it is very unsettling to see them return. After discussion with his teacher, we discovered he is also exhibiting negative behaviors in the classroom, including misbehavior and inattention during rug time, drawing on himself, lying, and hitting other children. Once again, these are all issues that were addressed and dealt with at the beginning of the school year. We are concerned that continued weekend-long visits every week will perpetuate these issues.”

Two children’s social workers, Carla Bell and Anabel Rodriguez, recommended the children remain in the home of the prospective adoptive parents. Ms. Bell and Ms. Rodriguez expressed their views in a March 17, 2016 memorandum to the juvenile court. Ms. Rodriguez wrote, “[The prospective adoptive parents] have demonstrated the ability to provide the type of care to suitably care and maintain[ the] child, [A.T.], in his current medical needs and requirements for ongoing medical supervision.” Although the children had regular visits with

Dayanara G., Ms. Bell explained: it was not in the children's best interest to be placed with their maternal aunt; the children had been in their current placement for two years; the children's health and development had improved while in the prospective adoptive parents' care.

On March 16, 2016, the mother spoke to Maria Torres, a social worker. The mother refused to sign a relinquishment of parental rights unless Dayanara G. could adopt the children. The mother asked for more time to consult with one of her attorneys before signing the relinquishment of rights document. On April 6, 2016, the mother signed the relinquishment documents designating the maternal aunt, Dayanara G., as the adoptive parent. On April 11, 2016, the department sent the mother's relinquishment documents to the California Department of Social Services. On April 12, 2016, Ms. Torres, one of the social workers, telephoned and left a voicemail message with unspecified persons employed by the California Department of Social Services. Ms. Torres said the department had not yet received an acknowledgement from the California Department of Social Services of receipt of the mother's relinquishment documents.

At the April 13, 2016 section 366.26 hearing, the department's lawyer, Jennifer Meister, requested a five-day continuance to finalize the mother's relinquishment of her

parental rights. Ms. Meister explained the California Department of Social Services had not yet given the department an acknowledgment that it had received the mother's relinquishment papers. The mother's attorney, Matias Alcaraz, concurred in the continuance request. The children's attorney objected to the continuance request, arguing it was not in the youngsters' best interests. The juvenile court denied the continuance motion. The juvenile court found: the mother had ample opportunity to proceed with the relinquishment of her parental rights because it had been an ongoing process for the last two years; it was not in the children's best interest to grant the continuance motion; and the relinquishment was not final. The juvenile court added: "Assuming *arguendo* . . . that the relinquishment was finalized, the court's view is that the department has abused their discretion. [¶] The court's view is that the department needs not have accepted the designated relinquishment because the department concedes that placement with the maternal aunt, who is the subject of the relinquishment, is not in these children's best interest. . . ."

Later during the April 13, 2016 hearing, Ms. Meister stated the California Department of Social Services had received the mother's relinquishment papers *but had not processed them*. Ms. Meister's unsworn allegation was based on a statement by a "colleague" who had spoken to Ms. Torres. The juvenile court

again found placement with the maternal aunt was not in the children's best interest. The juvenile court relied on the March 17, 2016 last minute information for the court document. The March 17, 2016 last minute information for the court document was signed by Ms. Bell and a supervising social worker, Ms. Harris. The juvenile court then proceeded with the section 366.26 hearing. After hearing the mother's testimony and the arguments, the juvenile court found the children adoptable and terminated parental rights. The mother filed her notice of appeal on April 20, 2016.

### III. DISCUSSION

The mother's sole contention is the continuance motion should have been granted. Under section 352, subdivision (a), no continuance shall be granted that is contrary to the interest of the children. Section 352, subdivision (a) states in part: "In considering the minor's interests, the court shall give substantial weight to the minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance." In dependency cases, continuances

are disfavored. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 174; see *In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.)

We review the juvenile court's denial of a continuance motion for abuse of discretion. (*In re F.A.* (2015) 241 Cal.App.4th 107, 117; *In re Mary B.* (2013) 218 Cal.App.4th 1474, 1481; *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 605.) To show abuse of discretion, the mother must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner resulting in a miscarriage of justice. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Emily D.* (2015) 234 Cal.App.4th 438, 448.) When two or more inferences can be reasonably deduced from the facts, the reviewing court cannot substitute its decision for that of the juvenile court. (*In re Stephanie M., supra*, 7 Cal.4th at p. 319; *In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1288.)

As a preliminary matter, the mother concedes there was no written motion filed to continue the section 366.26 hearing. Section 352, subdivision (a) provides, "In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance." (*In re B.C.* (2011) 192 Cal.App.4th 129, 144.) Further, the motion shall be served on the



parties at least two days before the date set for the hearing. (Cal. Rules of Court, rule 5.550(a)(4); *In re B.C.*, *supra*, 192 Cal.App.4th at p. 144.) The mother's request for a continuance is untimely and may be entertained only if there is good cause for the oral motion. (*In re B.C.*, *supra*, 192 Cal.App.4th at p. 144.)

The mother contends there was good cause to grant the short continuance requested by her and the department. The mother argues prior to the September 29, 2014 hearing, she notified the department of her wish to relinquish her parental rights. It was the mother's wish to designate Dayanara G. as the children's adoptive parent. The mother asserts she made concerted efforts to sign the relinquishment papers. She argues the only reason her relinquishment was not final was because of the department's lack of diligence. Further, the mother claims a five-day continuance would not be contrary to the children's best interests. The mother argues the children had a long-standing relationship with Dayanara G. The mother's contentions are without merit in that they do not demonstrate the juvenile court abused its discretion.

Without abusing its discretion the juvenile court could find no good cause existed for the untimely motion and for the continuance itself. The mother expressed an interest in relinquishing her parental rights in September 2014. But she did not sign the relinquishment papers until April 6, 2016. The

mother blames the department's lack of diligence for her delay in signing the relinquishment papers. She notes the department did not approve Dayanara G.'s home study until January 27, 2016. But the mother did not immediately sign the relinquishment papers after Dayanara G.'s home study was approved. Rather, on March 16, 2016, the mother asked for more time to consult with one of her attorneys before relinquishing her rights. On March 21, 2016, the department sent the mother a letter requesting the mother contact it to discuss relinquishment services. The mother did not sign the relinquishment papers until April 6, 2016, two days before the scheduled April 8, 2016 section 366.26 hearing. The section 366.26 hearing was continued to April 13, 2016 because the department's counsel and the mother were not present in court. Prior to the April 13, 2016 hearing, the mother did nothing to ensure her relinquishment became final. The mother had 18 months after September 2014 to relinquish her parental rights but did nothing until two days prior to the April 8, 2016 hearing. The juvenile court could reasonably rule the mother had ample time to complete relinquishment the form prior to the April 13, 2016 section 366.26 hearing.

Furthermore, the juvenile court could reasonably rule it was not in the children's best interest to continue the section 366.26 hearing. Section 352, subdivision (a) requires the juvenile

court to consider the: children's interests, giving "substantial weight" to their need for prompt resolution of their custody status; need to provide children with stable environments; and the damage to children of prolonged temporary placements. Here, the section 366.26 hearing has been continued multiple times from September 29, 2014, to April 13, 2016. The children have been waiting for resolution of their custody status for more than 18 months. Since June 20, 2014, the children have been placed with their prospective adoptive parents. In addition, A.T. has medical issues that required special care including a congenital heart defect, a history of failure to thrive and a G-tube placement. In their March 17, 2016 last minute information to the court, both children's social workers, Ms. Bell and Ms. Harris, recommended the children remain in the home of the prospective adoptive parents. Ms. Bell explained, "[The prospective adoptive parents] have demonstrated the ability to provide the type of care to suitably care and maintain[ the] child, [A.T.], in his current medical needs and requirements for ongoing medical supervision." While the prospective adoptive parents showed they could meet A.T.'s medical needs, there is no evidence of Dayanara G.'s ability to care for him if he were placed with her. In the March 17, 2016 last minute information to the court, Ms. Rodriguez stated Dayanara G. had not completed medical training to care for A.T.

In addition, although the children had regular visits with Dayanara G., Ms. Bell stated it was not in the children's best interest to be placed with their maternal aunt. Ms. Bell explained the children had been in their current placement with the prospective adoptive parents for two years. Ms. Bell reported the children's health and development had improved while in the care of the prospective adoptive parents.

Furthermore, the visits with maternal aunt, Dayanara G., did not benefit the children. The prospective adoptive parents wrote that A.T. had behavioral issues after he started visitations with Dayanara G. The prospective adoptive parents stated: "At home, we have noticed [A.T.] reverting to babyish behavior, including increased bed wetting, tantrums and whining, and fear of sleeping alone in his bedroom. These were behaviors we addressed when [A.T.] first came to live with us almost two years ago, so it is very unsettling to see them return. After discussion with his teacher, we discovered he is also exhibiting negative behaviors in the classroom, including misbehavior and inattention during rug time, drawing on himself, lying, and hitting other children. Once again, these are all issues that were addressed and dealt with at the beginning of the school year. We are concerned that continued weekend-long visits every week will perpetuate these issues." Further, during one weekend visit, Dayanara G. took the children to see the maternal aunt and

uncle that had physically abused the youngsters. Ms. Rodriguez stated the department has no way of ensuring the children would not see the maternal relatives again. And, according to last minute report, Dayanara G. continued to have significant contact with her brother and his family.

Based on the foregoing, there is sufficient evidence to support the juvenile court's order denying the continuance request. The juvenile court did not abuse its discretion in denying the motion for a continuance of the section 366.26 hearing. (*In re B.C.*, *supra*, 192 Cal.App.4th at p. 146 ["[W]here (1) the hearing has been continued multiple times; (2) the parent intended to complete a relinquishment of parental rights designating adoptive custody to go to a relative; and (3) substantial questions had been raised as to whether placing the child with the relative was in the child's best interests, granting the continuance was *not* in the child's best interests. . . ."].)

In a letter filed November 29, 2016, the mother raises issues based on a communication with an unnamed lawyer concerning post-section 366.26 hearing events. The events involve the relinquishment. With respect, we decline to consider the contents of the November 29, 2016 letter. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405; see *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 442.)

#### IV. DISPOSITION

The April 13, 2016 orders denying the motion for a continuance and terminating parental rights are affirmed.

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TURNER, P.J.

We concur:

KRIEGLER, J.

BAKER, J.